is not drawee, the general presumption is that the deposit was for payment and title to the paper passes to the bank. Magee *Banks and Banking* (2d ed. 1913) secs. 266, 267; *Walker and Brock v. Ranlett* (1915) 89 Vt. 71, 93 Atl. 1054. *A fortiori* such a presumption seems justified where the check is deposited with the drawee bank. But see *Nat. Gold Bank v. McDonald* (1875) 51 Calif. 64. The instant case seems to prefer the technical rule of law to the equitable principle of estoppel, which might have been applied had the court been so inclined, for the plaintiff showed no loss through the bank's conduct and did nothing in reliance upon the extension of credit. See *Walnut Hill Bank v. Nat. Reserve Bank* (1913) 141 App. Div. 475, 139 N. Y. Supp. 117.

CRIMINAL LAW—NECESSITY OF MENS REA IN STATUTORY OFFENCES.—The defendant killed a domestic pigeon under an honest belief that it was a wild dove. The Larceny Act, (1861) 24 & 25 Vict. c. 96, sec. 23, provided that, "Whosoever shall unlawfully and wilfully kill any House Pigeon or Dove under such circumstances as shall not amount to Larceny at Common Law" shall be liable to a penalty. *Held,* that an honest mistake of fact was no defence to a charge under that section. *Horton v. Gwynne* [1921] 2 K. B. 661.

It is elementary that *mens rea* is essential to common-law offences. 1 Bishop, *New Criminal Law* (8th ed. 1892) sec. 301. But the legislature may make certain acts criminal irrespective of guilty knowledge. *Commonwealth v. Weiss* (1891) 139 Pa. 247, 21 Atl. 10. In the absence of specific language, the necessity of *mens rea* is a problem of construction, in the solution of which the purpose and design of the statute must be kept in view. *Troutner v. State* (1916) 17 Ariz. 506, 154 Pac. 1048. Guilty knowledge is essential to crimes *malum in se.* 1 Bishop, *op. cit.* sec. 303, note 2. But intent is usually immaterial in offenses *malum prohibitum. Mens rea* was immaterial in a conviction for selling liquor to a minor in violation of a statute. *State v. Brown* (1914) 73 Or. 325, 144 Pac. 444. And for furnishing oleomargarine without notifying patrons. *State v. Welch* (1911) 145 Wis. 86, 129 N. W. 656. Ignorance of fact was no defence to a charge of selling an intoxicant as a "soft drink." *Commonwealth v. Weiss* (1891) 139 Pa. 247, 21 Atl. 10. The instant case seems to have carried the *malum prohibitum* doctrine to the extreme. The preamble to the Larceny Act begins, ". . . . to consolidate and amend the statute law relating to Larceny and other similar offenses." The section in question is preceded by sections dealing with the stealing of horses, cows, sheep, and other animals. "Wilfully" in a criminal statute generally means with a bad purpose. *State v. Clifton* (1910) 152 N. C. 800, 67 S. E. 751. "Unlawfully" is sufficient to charge a wrongful intent. *Ex parte Ahart* (1916) 172 Calif. 762, 765, 159 Pac. 160, 162; *Newby v. State* (1905) 75 Neb. 33, 36, 105 N. W. 1099, 1100. It is believed, therefore, that *mens rea* should have been an essential element for conviction in the instant case. Such a result was reached in an indictment under the same section. *Taylor v. Newman* (1863, Q. B.) 4 B. & S. 89. The court, however, tried to distinguish that case.

EMPLOYERS' LIABILITY ACT—LACK OF KNOWLEDGE OF DESTINATION IMMATERIAL IN DETERMINING INTERSTATE STATUS OF SHIPMENT.—The plaintiff's intestate, a conductor of a switching crew, employed by the defendant on its terminal track at Buffalo, was killed by reason of the derailment of his engine while transferring three carloads of beef from a local storage house to the New York Central tracks in East Buffalo. The beef was in fact destined for Montreal and thence to England, but the waybill merely called for switching between lines, and the defendant had not been notified in advance of the foreign character of the shipment. The lower court ruled that the plaintiff's intestate was engaged in foreign commerce when killed. *Held,* (three judges *dissenting*) that the plaintiff could

recover under the Federal Employers' Liability Act. *Cott v. Erie Ry.* (1921) 231 N. Y. 67, 131 N. E. 737.

The test adopted by the United States Supreme Court in determining whether an employee is engaged in interstate commerce within the meaning of the Federal Employers' Liability Act, is whether he was engaged at the time of the injury in interstate transportation or in work so closely related to it as to be practically a part of it. *Shanks v. Delaware, L. & W. Ry.* (1916) 239 U. S. 556, 36 Sup. Ct. 188. The multitude of apparently conflicting decisions on the subject, however, seems to indicate that if any definite criterion exists it is difficult to apply. In the last analysis, the particular facts of each case are decisive, and the tendency of the courts is to give to the term "interstate commerce" a broad significance. *Hopkins v. United States* (1898) 171 U. S. 578, 19 Sup. Ct. 40. The test is the nature of the work being done at the time of the injury. *Erie Ry. v. Welsh* (1916) 242 U. S. 303, 319 Sup. Ct. 116. If such work is a necessary preparatory movement in aid of interstate transportation, the national statute applies to employees so engaged. *Southern Ry. v. Puckett* (1917) 244 U. S. 571, 37 Sup. Ct. 703. The burden of proving that the injured employee was engaged in interstate or foreign commerce at the time of the injury is on the plaintiff. *Hench v. Pennsylvania Ry.* (1914) 246 Pa. 1, 91 Atl. 1056; L. R. A. 1915 C, 64, note; 1 Roberts, *Federal Liabilities of Carriers* (1918) sec. 465. But when the action is brought under a state workmen's compensation statute or at common law, and the defence is that the Federal Act applies, the defendant has the burden of proving that the employee was employed in interstate commerce when he was injured. *Zavitovsky v. Chicago, M. & St. P. Ry.* (1915) 161 Wis. 461, 154 N. W. 974. The view of the majority in the principal case appears to be sound. The interstate or foreign status of a shipment cannot be determined by the mere forms of billing or contract, but by the essential character of the commerce, that is, whether there is a continuity of movement from a point in one state to a point in another. *Texas & N. O. Ry. v. Sabine Tram Co.* (1913) 227 U. S. 111, 33 Sup. Ct. 229; *Ruppell v. New York Cent. Ry.* (1916) 171 App. Div. 832, 157 N. Y. Supp. 1095; *Rich v. St. Louis & S. F. Ry.* (1912) 166 Mo. App. 379, 148 S. W. 1011; L. R. A. 1915C, 60, note. If the cars are in fact moving in interstate or foreign commerce, knowledge on the part of the employer concerning their ultimate destination would seem to be immaterial. [The Supreme Court of the United States has refused to review the decision in the instant case. See daily press, October 11, 1921.]

EVIDENCE—ADMISSIBILITY—HABITUAL USE OF DRUGS.—To discredit a witness for the defence, the prosecution questioned her in regard to her habitual use of morphine. She denied its use. The prosecution then introduced evidence which tended to prove that the witness was a confirmed drug addict, and also that the drug had a harmful effect upon her powers of observation. It was not shown that the witness was under the influence of the drug at the time of the event concerning which she testified nor at the time of giving her testimony. *Held,* that such evidence was admissible. *State v. Prentice* (1921, Iowa) 183 N. W. 411.

Evidence tending to prove that a witness was under the influence of a drug either at the time of the event concerning which he testifies or at the time of giving his testimony is everywhere admitted for the purpose of affecting the credibility of the witness. *People v. Webster* (1893) 139 N. Y. 73, 34 N. E. 730; *Wilson v. United States* (1913) 232 U. S. 563, 34 Sup. Ct. 347. The mere fact that a witness is a habitual user of drugs is not of itself admissible to discredit the witness. *Williams v. United States* (1904) 6 Ind. Ter. 1, 88 S. W. 334; *Botkin v. Cassady* (1898) 106 Iowa, 334, 76 N. W. 722; *Gordon v. Gilmer* (1914) 141 Ga. 347, 80 S. E. 1007. But if it is accompanied by evidence that the use of drugs has materially impaired the testimonial qualifications of the witness, then